

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Criminal Revision Application 155 of 2021

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Date	Order with signature of Judge
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**For hearing of main case**

**30.10.2023**

Mr. Muniruddin advocate for the applicant  
Mr. Nihal Khan Lashari advocate for Respondent No.3  
Mr. Rubina Qadir DPG  
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Through this Cr. Revision application under Section 439 Read with Section 435 Cr.P.C., the applicant Aftab Ahmed Ansari has questioned the order dated 17.06.2021 passed by the learned Sessions Judge (East) Karachi Cr. Complaint No. 15 of 2021 and remand back the same with the direction to the trial Court to take cognizance under the provisions of the Illegal Dispossession Act 2005.

2. The brief facts of the case are that the applicant /complainant has filed the complaint under Sections 3, 4, and 7 of the Illegal Dispossession Act 2005 against the private respondents alleging therein that he is the attorney of Mst. Madiha Naz, initiated eviction proceedings against respondents No.1 to 3 being landlady in respect of the ground plus one-story building situated at Plot No. R-15, Sector 33, Korangi Township Karachi before the learned VIth Rent Controller Karachi East vide R.C No. 317/2016 such cases have culminated in favor of the landlady vide order dated 22.09.2017 passed by the learned VIth Rent Controller Karachi East. The applicant has averred that after the culmination of the eviction proceedings she filed an Execution Application before the trial Court however, the respondent moved the application under Section 12(2) CPC which was dismissed consequently the Execution Application was allowed by the Rent Controller and the Bailiff of the Rent Controller complied with the order and handed over the peaceful and vacant possession of the rented premises to the complainant. The applicant further averred that private respondents illegally entered into the subject premises and illegally occupied by breaking the locks on 13.01.2021 compelled her to initiate proceedings for restoration of her possession and in failure thereof, the complainant filed the Cr. Complaint No. 15 of 2021 before the IVth Additional Sessions Judge (East) Karachi and the report was called from the SHO concerned who verified the documents of the subject premises and found it genuine vide report dated 03.05.2021, however, the learned trial Court was not happy with the report and passed the impugned order dated 17.06.2021 and dismissed the complaint. The

applicant being aggrieved by and dissatisfied with the order dated 07.06.2021 filed the Cr. Revision Application on 26.07.2021, which has been objected to by the learned counsel for the private respondent on the premise that in terms of Section 8-A of the Illegal Dispossession Act 2005, the appeal is provided as such the instant Revision Application is not maintainable and liable to be dismissed.

3. The theme of the argument of the learned counsel for the applicant is that the impugned order dated 17.06.2021 is against the spirit of the law, and principles laid down by the Supreme Court; that after hearing of the case report has been called from the respondent No.7 as such the report has been submitted but the learned trial Court has failed to consider the report submitted by the Respondent No.7 and passed the impugned order in violation of the principles laid down by the apex Court in cases of illegal dispossession, therefore the impugned order is ab initio void and liable to be set aside. He has further contended that in a case into the pail of the Illegal Dispossession Act 2005 it must be assured that the accused entered into or upon any property without having any lawful authority to do so with the intention of dispossession or grabbing controlling or occupying the property from the owners. He lastly prayed for allowing the Cr. Revision Application.

3. Mr. Nihal Khan Lashari advocate for Respondent No.3 has supported the impugned order dated 17.06.2021 and has submitted that civil litigation between the parties is pending before the competent Court and the Respondent No.3 is in possession and the applicant is required to seek remedy before the appropriate forum. He also submitted that the private respondents are not the illegal occupants of the subject premises and their case do not fall within the ambit of the Illegal Dispossession Act 2005. He further submitted that Section 3(1) of the Act 2005 provides punishment for illegal occupation of the property and it is the discretion of the trial Court either to acquit or convict the accused or even dismiss the complaint if found not maintainable in keeping in view the law and material available on record. As such the impugned order is well reasoned and does not call for indulgence of this Court in the presence of a specific provision of appeal which has been bypassed by the applicant. In support of his contention, he relied upon the case of *Karim Bux v Zahir Shah PLD 2022 Peshawar 237*.

4. Ms. Rubina Qadir DPG has adopted the argument of learned counsel for Respondent No.3.

5. I have heard the learned counsel for the parties and have perused the material available on record.

6. Applicant has filed a complaint under sections 3,4, and 7 of the Illegal Dispossession Act 2005 against Respondent No. 1 to 6 and a report from the concerned SHO was called who submitted his report with the narration that he obtained verification of the ownership of the plot No. R-15 Sector 33-B measuring 120 Sq. Yards Korangi Township Karachi, the same stood in the name of Mst. Madiha Naz wife of Aftab Bashir (Applicant) holding CNIC No. 42201-3215552-2.

7. It appears from the record that Illegal Dispossession proceedings were dismissed on the premise that no case for Illegal Dispossession at the hand of the respondent was made out and thus did not warrant cognizance. The aforesaid findings of the learned trial Court are not based on evidence as the matter has not been decided on merit as the SHO has submitted the report which prima facie shows that the applicant is the owner of the subject premises and the private respondents failed to show the occupation of the subject premises under the law. So far as the ground raised by the learned counsel for the applicant that the only appeal is provided against the order passed by the learned trial Court, suffice it to say that the remedy of an appeal is provided from the order of conviction or acquittal passed by the Court of Sessions under the Illegal Dispossession Act 2005 whereas in the present case, the trial has not yet begun, thus the question of filing an appeal against the order of dismissal of complaint in-limine was/is not called for.

8. A right to appeal is statutory and substantial. It allows a case to move from an inferior court to a superior court for re-examination of both facts and questions of law. In appeal, this Court can re-examine facts and questions of law. In revision, only the legality within the jurisdiction is examined. Primarily an appeal is a statutory right, while revision is not.

9. In view of the above Illegal Dispossession proceedings cannot be dismissed on account of the pendency of civil litigation until and unless the evidence recorded which factum is lacking in the present case. This Revision application is allowed with a direction to the learned trial Court to record evidence of the parties and ensure possession of the premises to the real owner of the subject property. The aforesaid exercise be completed within one month.

JUDGE